IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

SINGLE BENCH

CIVIL REVISION NO.133 /2005

APPLICANT/ APPELLANT/ PLAINTIFF : Lalit S/o. Laxman Deshpandey, aged about 37 years (now 44 years), R/o. Quarter No. 14-B, I Pocket Madauda Sector, Bhilai Nagar, Tehsil and District Durg, Present Address 8/A-G Pocket, Madauda Sector, Bhilai Nagar, District Durg, Chhattisgarh

P.R. No. 1333 dated 11-07-05 Presented by Shri Ram Bihari Gupta

VERSUS

NON-APPLICANT/: RESPONDENT/ DEFENDANT Jagdish Prasad, S/o. Mohan Chand Anand, aged about 49 years (now 56 years) R/o. Quarter No. 3/C, Street No. 5, Sector 5, Bhilai, Tehsil and District Durg, Chhattisgarh

CIVIL REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE, 1908

impugned

(3)

(22)

HIGH COURT OF CHHATTISGARH : BILASPUR

Civil Revision No. 133 of 2005

Applicant/ Plaintiff : Lalit Deshpandey

Vs.

Respondent/ Defendant : Jagdish Prasad

Applicant/Plaintiff by Shri Ratnesh Agrawal, Advocate.

ORDER
(Passed on 16/12/05)

Dhirendra Mishra, J

The applicant/plaintiff has preferred this civil revision as the suit preferred by him for recovery of Rs.20,640/- was dismissed by the learned trial Court and the appeal preferred by him has been further dismissed by the learned lower appellate Court by the impugned judgment and decree dated 23.02.2005. (Parties hereinafter shall be referred to as per their description before the trial Court.)

2. The plaintiff filed a civil suit for recovery of Rs.20,640/- on the averment that the defendant had obtained loan of Rs. 12,000/- on interest at the rate of 2% per month from the plaintiff and had executed a promissory note of Ex.P/1 and undertaken to return the same along with interest on demand. However, when the defendant did not return the advanced money as promised, a legal notice of Ex.P/2 dated 05.10.1995 was served but the defendant did not reply the said notice whereupon the above suit for recovery of the advanced money along with interest has been filed.

3. However, the defendant remained absent despite service as a result of which he was proceeded ex-parte on 21.11.2003 and thereafter, the plaintiff examined himself and closed his evidence.

4. Learned trial Court dismissed the suit by recording a finding that the suit of the plaintiff is based on the promissory note, however from perusal of the document of Ex.P/1, the documents appears to be suspicious and unreliable.

(23)

5. The appeal preferred by the plaintiff was also dismissed by the learned lower appellate Court confirming the judgment and decree passed by the trial Court and by recording an identical finding that the promissory note of Ex.P/1 is a suspicious document and the same cannot be relied upon.

6. Learned counsel for the applicant/plaintiff has challenged the judgments of both the Courts below on the ground that the suit cannot be dismissed solely on the ground that the promissory note of Ex.P/1 is a suspicious document and the same is not reliable. The Courts below have disregarded the fact that a legal notice of Ex.P/2 by which a demand for advanced money along with interest was made, has been duly served upon the defendant and the same was not replied by the defendant. He further submits that the Courts below ought to have decreed the suit on the ground of unrebutted oral and documentary evidence regarding the demand of money advanced against the promissory note. Thus, both the Courts below have committed material irregularity and thereby have failed to exercise the jurisdiction vested in them.

7. I have heard learned counsel for the applicant/plaintiff and perused the material available on record.

8. Undisputedly the suit of the plaintiff is based on the promissory note of Ex.P/1. Both the Courts below have recorded a concurrent finding of fact that on the face of the promissory note, it appears to be a suspicious document. The above finding is based on cogent reasoning which is evident on the face of the document itself. Since the foundation of the suit rests on a document which has been held as a suspicious document, any notice of demand based on the same document cannot confer any right upon the plaintiff to recover the money advanced against the said document.

9. Thus on the basis of aforesaid discussions, there is no illegality or material irregularity committed by both the Courts below in dismissing the suit of the plaintiff which requires interference by this Court while exercising revisional jurisdiction under Section 115 of the Code of Civil Procedure. The revision is devoid of substance and the same is accordingly dismissed at the motion stage itself.

Sd/-
Dhirendra Mishra
Judge

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